

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL DOWNING,

Plaintiff,

CASE NO. 1:06-CV-232

v.

HON. ROBERT J. JONKER

CORRECTIONAL MEDICAL
SERVICES, INC., et al.,

Defendants.

ORDER APPROVING REPORT AND RECOMMENDATION

The Court has reviewed the Magistrate Judge's Report and Recommendation (docket # 92) filed on October 24, 2007. Plaintiff filed his Response objecting to the Report and Recommendation (docket # 93) on November 7, 2007.

Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, "[t]he district judge . . . has a duty to reject the magistrate judge's recommendation unless, on de novo reconsideration, he or she finds it justified." 12 WRIGHT, MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 381 (2d ed. 1997).

Specifically, the Rules provide that:

The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

FED R. CIV. P. 72(b)(3). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981).

The Court has reviewed de novo the claims and evidence presented to Magistrate Judge Greeley; the Report and Recommendation itself; and Plaintiff's objections. After its review, the Court finds Magistrate Judge Greeley's Report and Recommendation to be both factually sound and legally correct. Plaintiff has failed to demonstrate a probability of success on the merits, the imminence of irreparable harm or any other element supporting entry of a preliminary injunction. To the contrary, as Magistrate Judge Greeley noted, Plaintiff's ability to file lengthy objections belies the fundamental premise of his request for a preliminary injunction.

ACCORDINGLY, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge, filed October 24, 2007, is approved and adopted as the opinion of the Court.

IT IS FURTHER ORDERED that Plaintiff's motion for postponement (docket # 85) of consideration of Defendants' motion for summary judgment on exhaustion issues is **DENIED**.

IT IS FURTHER ORDERED that the Plaintiff shall have until **April 14, 2008** to respond to Defendants' Motion for Summary Judgment for Failure to Exhaust Administrative Remedies (docket # 65).

Dated: March 31, 2008

/s/ Robert J. Jonker

ROBERT J. JONKER

UNITED STATES DISTRICT JUDGE